

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**WESLEY E. EDMONDS**

Claimant

VS.

**UNIFIED SCHOOL DISTRICT NO. 500**

Respondent

Self-Insured

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Docket No. 223,891

**ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on August 13, 1997.

**ISSUES**

The Order by the Administrative Law Judge authorizes treatment by Dr. Striebinger. Respondent asked the Appeals Board to review the implicit finding that claimant met with personal injury by accident on the date alleged.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be reversed.

Claimant testified that he twisted his left hip on May 23, 1997, and experienced pain down his left leg to his foot. May 23, 1997, was a Friday, and claimant testified that the incident occurred at approximately 10:30 that night. He acknowledged he did not report an accident that evening and testified that he went to the hospital Saturday evening.

Claimant's wife also testified, in part, to address statements in the medical record which gave a history different from that claimant gave in his testimony. The medical records indicate that claimant had experienced progressive pain through the week before

his hospital admission. She testified, as had claimant, that he had strep throat the week before, not back pain.

Claimant had injured his low back in an automobile accident in 1995. He was off work for six weeks following this accident. Respondent introduced medical records indicating that claimant periodically, thereafter, experienced back problems sufficiently severe to require him to seek medical treatment. One of the notes, dated October 19, 1996, states claimant has back pain every six months. The symptoms exhibited on examination by Ronald Haulmark, RPAC, on December 5, 1996, included left hip pain. Claimant minimized the prior injury and testified that he was off work for the 1995 auto accident only because his lawyer directed him to remain off work.

The records of treatment for the current alleged injury refer to the automobile accident but contain no reference to a new accident or incident at work. The history in the records of Maria Palmeri, M.D., states as follows:

The patient is a 33-year old black male who has had history of some back pain in the past following an automobile accident. He has been in his usual state of health and occasionally he has some mild back pain and takes Tylenol #3 off and on but on the week before admission he started having progressive pain that went down to the left leg. This was so severe that the night before admission he was laying [*sic*] on the floor unable to get up.

The history in the consultation report by Richard E. Whitehead, M.D., is similar but adds details. His report states that:

This patient is a 33 year old male who developed pain in the region of the low lumbar spine and left buttock on 5/19/97. The problem slowly became progressively worse, although the patient was able to continue working up through his normal work week of Friday 5/23. Initially when patient would awaken with pain each morning, he found that walking help [*sic*] relieved the pain. But as of Wednesday, 5/21/97, the pain was too great for him to walk as an exercise.

Finally, the emergency department report by David S. Vodonick, M.D., of May 27, 1997, states that:

This is a 33-year-old male who was initially evaluated by Dr. Stephen Lund. His pain started this morning and it was radiating down to his leg. He denies any injury. He has had nausea and vomiting. His wife tells me that this is the worst she has ever seen him. He had tears and had to crawl around at home.

Claimant attempted to explain the absence of any reference to a work-related incident. He explained, in part, that he did not think the incident at work had been that serious. The Board concludes that claimant's testimony does not, given the history reflected in the medical records, carry claimant's burden of proving by a preponderance of the credible evidence that he suffered an accident on May 23, 1997.

**WHEREFORE**, the Appeals Board finds that the Order by Administrative Law Judge Steven J. Howard, dated August 13, 1997, should be, and the same is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1997.

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BOARD MEMBER

c: Stanley L. Wiles, Kansas City, MO  
Frederick J. Greenbaum, Kansas City, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director